FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 29 1948
CHARLES ELMORE CROPLEY
CLERK

No. 554

Supreme Court of the United States

OCTOBER TERM, 1947

JACK PRINCIPALE,

Petitioner,

—v.—

GENERAL PUBLIC UTILITIES CORPORATION as Successor to Associated Gas and Electric Company and ASSOCIATED GAS AND ELECTRIC CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JACK PRINCIPALE,
Petitioner pro-se.

TABLE OF CONTENTS

PAGE

PETITION AND BRIEF

A. Summary Statement of the Matters Involved 3

B. Questions Presented 5

C. Reasons for Granting the Writ 9

Acquisition During Proceedings 12

Schedule A

Assets of Associated Gas and Electric Company (A. G. & E. Co.) and Subsidiaries 17

Table of Cases Cited:

Associated Gas & Electric Co., In re, 149 F. 2d 996, 1007, cert. denied sub. Elias v. Clarke, 326 U. S. 736 4

Elias v. Clarke, 143 F. 2d 640, 644, cert. denied 323 U. S. 778 4

PAGE

Statutes Cited:

Uniform Stock Transfer Act 7

Statutes of Limitations 7

Ratifications 7

Rescission 7

Laches 7

Restitution 7

Definition of "Statutory Successor" 8

Federal Holding Securities and Exchange Laws 8

Excerpts of Incorporation of the senior COs of Ageco and preferred Stocks in the event of liquidation or dissolution 9

Constitution of the United States 10

Bankruptcy Act, Public 696, 75th Congress 12

Liquidation or Dissolution of Corporation under the Public Utilities Company Act of 1933 14

No. 59

Supreme Court of the United States

OCTOBER TERM, 1947

JACK PRINCIPALE,

Petitioner,

—v.—

GENERAL PUBLIC UTILITIES CORPORATION as Successor to Associated Gas and Electric Company and ASSOCIATED GAS AND ELECTRIC CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

January 21, 1948.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner Jack Principale as a holder in due course of the 6% and 7% Convertible Obligations hereinafter referred to as COs due 2002, Series A and $7.00 dividend Series Preferred Stock of Associated Gas & Electric, hereinafter referred to as AGECO prays that a writ of certiorari

issue to review the decision of the Circuit Court of Appeals, Second Circuit, decided November 20, 1947 and the Order entered by that Court on the 23rd day of December denying the claim of the petitioner:

1. Participation under the correct interpretation of the Plan of Reorganization of Associated Gas and Electric Company (Ageco).

2. Participation as a "Statutory successor of an original holder by due process of law.

3. Participation because the assets are not sufficient to provide in full for senior claimants (securities owned by the petitioner).

The petitioner is the holder of 6% and 7% Convertible Obligations due 2002, Series A, and $7.00 Dividend Series Preferred Stock, Series A of Ageco. The Plan of Reorganization of Ageco as approved by the SEC and by the lower court on January 1, 1946, provided for the participation of *such* securities in the following language:

> "Such of the following securities of Ageco (senior Convertible Obligations) as were issued in exchange for the securities enumerated in Item 7 (Convertible Debenture Certificates) *and* as remain in the hands of Original Holders." (See pages 3 and 4, Excerpts From Plan of Reorganization—Appendix to Appellant's Brief.)

The Opinion of the Circuit Court of Appeals has not taken into consideration the questions presented by the petitioner in his brief, reply brief and supplemental memorandum.

A. *Summary Statement of the Matters Involved.*

On May 10, 1945, a Summary of the Plan of Reorganization of Associated Gas and Electric Company was issued to the petitioner stating * * * that the assets of Ageco were not sufficient to provide in full for senior claimants.

The Plan of Reorganization of Ageco which provides for the participation of such securities as are held by the petitioner reads as follows:

> "Such of the following securities of Ageco (Senior COs and preferred stock) as were issued in exchange for the securities enumerated in item 7 Convertible Debenture Certificates hereinafter referred to as (CDCs) and as remain in the hands of original holders."

In compliance with the terms of the Plan of Reorganization of Ageco which provides for the participation of "Such Senior Convertible Obligations and Preferred Stocks as are held by the petitioner, as were issued in exchange for the securities enumerated in Item 7 (CDCs), these securities were submitted to the City Bank Farmers Trust Company, Exchange Agent for exchange for the common stock of General Public Utilities Corporation, as provided under the language of the Plan and also as a "Statutory successor of an original holder by due process of law. The claim was expunged.

In pursuance of Orders Nos. 441 and 691, these proceedings were commenced.

The lower courts disallowed the claims on the following grounds:

I. That the securities in question were acquired in the open market by purchase during or subsequent to 1939.

II. That none of the securities held by the claimant (COs) were acquired in exchange for (CDCs).

III. That the securities in question were assigned to the claimant as evidenced by the form on the reverse side of the securities (page 9 of Appendix to Appellant's Brief).

IV. That the claim asserted herein is based upon an incorrect interpretation of Article II, paragraph 6, subdivision 8 of the Plan of Reorganization, which provides for the participation of such securities as are held by the claimant, in the following language:

> "Such of the following securities of Ageco (COs) as were issued in exchange for the securities enumerated in Item 7 (CDCs) and as remain in the hands of original holders."

V. That the reason why "Original Holders" were granted participation and "Non-Original Holders" were excluded was because of a *theory* that these holders may have a claim for rescission or damages based on fraud or misrepresentation in connection with the exchange of Convertible Debenture Certificates for Convertible Obligations.

VI. That under a New York law "a claim for fraud or misrepresentation in connection with an obligation evidencing a debt does not pass merely with the transfer of the obligation itself, where there are lacking special words of assignment; forecloses non-original holders of COs, or whatever series, from asserting any such claim." *Elias* v. *Clarke,* 143 F. 2d 640, 644, cert. denied 323 U. S. 778; *In re Associated Gas & Electric Co.,* 149 F. 2d 996, 1007, cert. denied sub. *Elias* v. *Clarke,* 326 U. S. 736.

VII. That the petitioner is not a "Statutory successor of an original holder."

B. *Questions Presented.*

Unfairness of participation under the plan as between the holders of the Convertible Obligation Holders of Ageco due 2002, 6%, 6½% and 7% and Preferred stocks of the same series such as are held by the petitioner.

I. Where a statement issued to the petitioner that certain holders of the above securities such as he has would be deprived of his rights to participate under the Plan of a security evidencing a debt, while another group of the same class of security holders would be allowed participation because the *assets were not sufficient to provide in full,* would the fact that the Consolidated Assets of Ageco on the date of the consummation of the Plan amounted to the sum of $772,792,493.51 as shown by the corporation statement, hereto annexed, marked Schedule A, allowing sufficient asset coverage prove fraudulent, thereby allowing the Petitioner the same rights to participate under the plan on a pro rata basis with the rest of the creditors and stockholders of the same class?

II. The Plan of Reorganization of Ageco for senior securities such as the petitioner holds provides participation in the following language:

"Such of the securities of Ageco (COs) as were issued in exchange for the securities in Item 7 (CDCs) equals participation in the Plan."

According to the language any holder of *such* securities COs which were exchanged for CDCs is a par-

ticipant under the plan, no mention is made which designates any particular holder. Therefore, since the Plan of Reorganization of Ageco provides for participation of the petitioner as a holder of *such* securities (Senior COs and Preferred stocks which were exchanged for CDCs), was he denied due process of law according to the terms stipulated under the Plan? (Article II, paragraph 6, subdivision 8.)

III. The word "and" divides the Plan and is supplemented by the addition of "as remain in the hands of Original Holders, the word "and" has often been construed as meaning "or" and has been so treated in the construction of statutes, has the petitioner been denied participation under the incorrect interpretation of the plan by the lower court by confusing the two terms which read as follows:

"a. Such of the following securities of Ageco (COs) as were issued in exchange for the securities enumerated in item 7 (CDCs)?

"b. And as remain in the hands of original holders?"

IV. The Plan further provides for the securities that remain in the hands of original holders by defining them elsewhere but not in the Plan as "Person who originally converted there senior CDCs for COs and Preferred stocks of the same series and by providing participation for the personal representatives, legatees or distributees, or statutory successors of such persons, where the Court below recognized only the rights of original holders by excluding the petitioner classified as a non-original holder because of his purchase of his securities directly or indirectly from an original holder because of a *theory* that the orig-

inal holders *may* have a claim for *rescission* or damages based on fraud or misrepresentation in connection with the exchange of CDCs for COs, was the petitioner denied due process of law as a "Statutory or legal successor of an original holder under the Uniform Stock Transfer Act, Statutes of Limitations, Ratifications, Rescission, Laches.

V. Where a *restitution* was made from the Hopson assets for the sum of $20,760,717 in favor of Original Holders in connection with accountings and damages based upon alleged misappropriations of funds, fraud and mismanagement on the part of Howard C. Hopson, John I. Mange and other former officers and directors of Ageco, does this restitution void all claims for rescission or damages based on fraud in connection with the exchange of CDCs for COs in favor of original holders, thereby giving the petitioner the rights to participate under the plan with the rest of the participants as a holder of the same series of securities?

VI. Where the court below found a theory for the protection of one group of creditors and stockholders of the senior class called original holders, it denied the present holder of the same series of COs and Preferred stocks by drawing a barrier between original holders and non-original holders, did the court below exceed its power in discriminating against creditors and stockholders of the same class of securities?

VII. Where the court below found that under the New York law, "a claim for fraud or misrepresentation in connection with an obligation evidencing a debt does not pass merely with the transfer of the obli-

gation itself where there are lacking special words of assignment: forecloses non-original holders of COs, of whatever series, from asserting any such claim," was the petitioner denied due process of law based on the fact that "Associated Gas and Electric Company (Ageco) is principally a public utility holding company purchasing, distributing and selling electric energy with activities extending over many states and the Philippine Islands, their use of the instrumentalities of interstate commerce and wide geographic distribution of their security holders, make difficult, if not impossible State regulation of such companies and is subject to the Federal Holding Securities and Exchange laws governing the negotiability of negotiable instruments under the Bankruptcy Act, Public 696, 75th Congress, thereby allowing the securities in question participation with the rest of the original holders?

VIII. Where the court below states that a "Statutory successor" is a phrase of art and as such is used to designate "the person to whom the assets of a corporation pass upon dissolution" and it appears, is one standing in relation to the original corporate holder in the same manner as a distributee stands in relation to a deceased individual holder, would the following facts by due process of law prove that:

Principale, who [illegible]d his securities through legal transaction from [illegible]riginal corporate holder is entitled under the Public Utilities Company Act of 1933 to the assets of Ageco in dissolution and as the holder of the securities involved is the person designated in the statutes of incorporation of Ageco which entitles him as the legal holder of the $7 Divi-

dend Preferred Stock in the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the Corporation the sum of One Hundred Dollars ($100.00) per share, and in each case, an amount equal to the unpaid cumulative dividends thereon accrued respectively to date of payment, further, provisions are made for any successor corporation with respect to the conversion in the case of the Convertible Obligations due 2002, 6% and 7%, series A, to be payable by stocks or assets • • • Would the fact that Principale, standing in the shoes of the original holder who forfeited his rights to restitution and is barred from a cause of action involving fraud or misrepresentation in the conversion of his CDCs into COs because of the Statutes of Limitations and that the equities of Principale who contracted on the faith of the fraudulent securities is superior to that of the original holder under Ratification, Rescission, Laches, thereby entitling Principale who stands in relation to the original corporate holder in the same manner as a distributee stands in relation to a deceased individual holder as the person designated in the excerpts of Incorporation of Ageco to the assets of the corporation which had at the time of the consummation of the Plan of Reorganization consolidated assets of over three-quarters of a billion dollars, thereby providing full asset cover age for the securities owned by Principale?

C. *Reasons for Granting the Writ.*

I. The decision of the court below involves the important question of the interpretation and construction of the Plan of Reorganization, original holder versus non-original

holder, the Constitutional application of the Bankruptcy Act of the United States involving the negotiability of negotiable instruments and the question of asset-coverage of Ageco which discriminated in favor of one group of security holders of the same series as against the securities held by the petitioner under the Public Utilities Company Act of 1933.

The very language of the Plan should allow the petitioner as a holder of "Such of the following securities of Ageco (COs) as were issued in exchange for the securities enumerated in item 7 (CDCs) participation. However, the Court exceeded its power by discriminating against creditors and stockholders of the same series whereby both original and non-original holders of the same class of securities could and should have shared alike.

The Court has held the term "And as remain in the Hands of Original Holders" the dominant feature of the Plan by using it as a club over the securities held by the petitioner (a non-original holder), by so doing it has set a precedent by violating the Constitutionality of the Federal Bankruptcy Act in relation to the negotiability of negotiable instruments such as are owned by Principale. Whether or not the securities were acquired by purchase in the open market is not a conclusive fact in expunging his claim under the terms of the Plan as a bona-fide purchaser of such securities which had sufficient asset coverage for full face-amount payment and discharge of the securities held by Principale.

The acquisitions of his securities by purchase in the open market were made for investment and with respect to market conditions only, the financial condition of Ageco with consolidated assets of over three-quarters of a billion dollars not including the payment of war damages for claims arising in the Philippine Islands of $400,000,000 indicated

full coverage with sufficient assets to provide the face-amount of Principale's securities and an amount equal to the unpaid cumulative dividends thereon accrued.

With respect to the cases cited by the lower court, the rights of the petitioner as a holder of senior COs securities of Ageco due 2002 and the $7.00 Dividend Series Preferred stocks were violated as a result of the drawing of a line of demarcation as between an original holder and a non-original holder.

The purchase of Principale's securities were sporadic and not timed with respect to any significant step or development in connection with the claim allowed the original holder for rescission based on fraud or misrepresentation in connection with the exchange of CDCs for COs. As a matter of law, such a purchase gives the petitioner the same legal rights to participation in connection with the related CDCs or the COs as a successor of an original holder by due process of law under the Uniform Stock Transfer Act, Statutes of Limitations, Ratification, Rescission, Laches, the assignment vests in the petitioner the same rights as the original holder. The original holder failed to exercise care and vigilance to discover fraud in the conversion of CDCs for COs, and if upon having discovered it, failed to act promptly in repudiating his exchange. "There must be no laches." Under the Plan the petitioner having acquired these rights for a valid consideration and in good faith should be treated on a parity with security holders of the same series.

Whether the theory of protecting one group of security holders of senior COs (original-holders) while disallowing participation for another group of COs of the same series (non-original holders) because the original holders may have a claim for rescission or damages based on misrepresentation or fraud in connection with the exchange of CDCs for COs under the New York law, is in contradiction

with the Bankruptcy Act of the United States. Bankruptcy Act No. 696, 76th Congress, Section 70(D) provides that:

> "A person asserting the validity of a transfer under this subdivision shall have the burden of proof. Except as otherwise provided in this subdivision and in subdivision g of section 21 of this Act, no transfer by or in behalf of the bankrupt shall be valid against the trustee: Provided, however, that nothing in this Act shall impair the negotiability of currency or negotiable instruments."

The Convertible Obligations due 2002, Series A, 6% and 7% and preferred stock of the same class should be allowed treatment in reorganization with the securities of the same class. There was no need of preference as between the original holder and the non-original holder on a claim for rescission based on fraud since a restitution from the Hopson assets in 1941 and 1942 put all the security holders of the same class on a parity basis.

Acquisition During Proceedings.

> "(3) A person having actual knowledge of such pending bankruptcy shall be deemed not to act in good faith unless he has reasonable cause to believe that the petition in bankruptcy is not well founded."

The petitioner's acquisition of his securities by purchase in the open market prior to, during or subsequent to 1939 were made for investment and with respect to market conditions only, and not in contemplation of the plan; the financial condition of Ageco with consolidated assets of over three-quarters of a billion dollars were such as to indicate full coverage of his securities purchased.

Principale was frozen out and discriminated against participating under the Plan of Reorganization as a holder of the senior Convertible Obligations of Ageco 2002, series A and the Preferred stocks of the same series by dividing original and non-original holders.

If the consolidated assets of Ageco of over three-quarters of a billion dollars provided for one group of holders of the senior COs defined as original holders, these same assets show that the financial conditions of Ageco indicated full asset coverage for Principale without freezing him out of the Plan * * * Either all senior holders of the securities involved should have been left out of the Plan * * * or both groups of the same series should be allowed participation * * * Priority and discrimination has been allowed by the lower court in favoring original holders as against the petitioner, a non-original holder (a security).

The mere fact that Principale obtained his securities in the open market for a fair consideration entitles him to all the rights of the original or any successive holders of his senior COs and preferred stocks. If the original holder had any claim for rescission based on fraud or misrepresentation in connection with the conversion of his CDCs into senior COs due 2002 and preferred stocks of the same series, in practice he severed all his rights to sue or to enjoy the fruits of the new stocks of General Public Utilities Corporation. Further, a restitution from the Hopson assets in 1941 and 1942 foreclosed all further claims on the part of original holders. Original or non-original holders of the securities in question should be treated alike under the plan of reorganization of Ageco. The petitioner becomes under the Uniform Stock Transfer Act, Statutes of Limitations, Ratifications, Rescission, Laches, a legal or

statutory successor of an original holder, and as a holder of the securities in question which provide in the case of the $7 Dividend Preferred Stock of Ageco in the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) the sum of One Hundred Dollars ($100.00) per share, and in each case an amount equal to the unpaid cumulative dividends thereon accrued and in the case of the senior Convertible Obligations upon conversion to be payable by stocks or assets. In view of the consolidated assets of Ageco of over three-quarters of a billion dollars the petitioner is entitled under the Public Utilities Company Act of 1933 and under the provisions made binding under the statutes of Incorporation of Ageco to full asset coverage plus unpaid cumulative dividends accrued thereon.

In view of the clear conflict and the importance of determination by this court in determining a fair hearing involving the interpretation of the Plan of Reorganization of Ageco relative to the senior Convertible Obligations, Preferred stocks and the related Convertible Debenture Certificates of Ageco, negotiable instruments and full asset coverage for holders of the same class of securities without discriminating as between original security holders and non-original holders will serve as a precedent and guide for the National Bankruptcy Act and the Public Utilities Company Act of 1933, as well as adjudicate the rights of the petitioner.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under seal of this Honorable Court and that said order of the Circuit Court of Appeals may be reversed or modified by this Honorable Court, and that your petitioner may have such and further

relief in the premises as to this Court may seem just and proper.

New York, January 21, 1948.

JACK PRINCIPALE,
Petitioner pro-se.

SCHEDULE A

Assets of Associated Gas and Electric Company (A. G. & E. Co.) and Subsidiaries

Associated Gas and Electric Co. owns the entire capital stock of Associated Gas and Electric Corp. As of Dec. 1, 1945, latter company, an intermediate holding organization, controlled the following subsidiaries through ownership, directly or indirectly, of the percentages of voting stock stated below:

	Percent
Associated Electric Co.	100
Arizona General Utilities Co.	100
*Eastern Land Corp.	100
†Escudero Electric Service Co.	100
*Indiana Gas Utilities Co.	100
†Manila Electric Co.	100
‡Assoc. Util. Investing Corp.	100
*Missouri General Utilities Co.	100
Pennsylvania Electric Co.	100
Citizens Transit Co.	100
Nineveh Water Co.	100
General Gas & Elec. Corp.	100
South Carol. Elec. & Gas Co.	100
NY PA NJ Utilities Co.	100
Canadea Power Corp.	100
Glen Rock Elec. Light & Pwr. Co.	100
Metropolitan Edison Co.	100
New Jersey Power & Light Co.	100
*New Jersey Northern Gas Co.	100
Jersey Central Pwr. & Lt. Co.	100
New York State Elec. & Gas Corp.	100
Staten Island Edison Corp.	100

	Percent
Northern Pennsylvania Power Co.	100
Waverly Electric Light and Power Co. (The)	100
Pennsylvania Edison Co.	100
Blair Engineering & Supply Co.	100
Rochester Gas & Electric Corp.	100
Spring Brook Water Co.	100
York Railways Co.	96 00
Edison Light & Power Co.	100
York Steam Heating Co.	100
Associated Utilities Corp.	100
Associated Real Properties, Inc.	100
Railway & Bus Associates (The)	100
Gas & Elec. Associates	100
*Richmond Railways, Inc.	100
Schenectady Railway Co.	28 84
Dover Casualty Insurance Co.	100
Kenka Lake Power Corp.	35 38
*United Coach Co. (The)	100
*Schenectady Rapid Transit, Inc.	100
Valley Public Service Co. (The)	100
*Atlantic Utility Service Corp.	100
Employees Welfare Association, Inc. (Del.)	100
Employees Welfare Assn., Inc. (N. J.)	100
Associated General Utilities Co.	

• • • • •

* Inactive.

† Properties located in the Philippine Islands.

‡ Dissolution would become final in January, 1946.